ween the parties as co-lessees only. In *Pickering* v. *Vowles* [3] which was cited before me, where a tenant for life of a leasehold under a marriage settlement suffered the lease to expire and obtained another lease for himself and died, it was held that the deceased must be deemed to have held the renewed lease on trust for the settlement. In the instant case, the 3rd defendant was not registered as a co-lessee under any trust settlement, nor could he be said to have suffered the lease to expire. The mining titles in this case could never have been renewed unless all the co-lessees without exception were available to sign the application form.

The rule in *Keech* v. *Sandford* [4] is that no legal impediment to the renewal of a lease on behalf of a *cestui que trust* who is a minor could operate to entitle the trustee to renew the lease in his name for his personal gain. In *Snell's* Principles of Equity (25th Edition) at page 216, the learned commentator says, and I quote:—

"The rule in *Keech* v. *Sandford* has been extended in a modified form to persons who, though not in a definite fiduciary relationship to the other persons interested, have a partial interest in the lease. The renewed lease is looked upon as a continuation of the original lease, and so if there is any ground for intervention of equity, the grantee of the renewed lease will be treated as holding it for the benefit of the same persons as were interested in the original lease. Thus if a renewal is obtained by a partner, a mortgagor or mortgagee, a joint tenant or a tenant in common, or a tenant for life there is a rebuttable presumption that the renewed lease is held on a constructive trust. If the lessee can show that he did not in any way abuse his position or intercept an advantage coming to the estate; and is guilty of no breach of faith, he may retain the lease for his own benefit; but it is difficult for a partner, or, in less degree for a mortgagor or mortgagee, to rebut the presumption."

It is quite true that all the parties to this action had a partial interest in the lease; and in normal circumstances, it would not be incorrect to draw the inference, assuming of course that the grant of a new title to the same land amounted to a renewal of the lease, that the defendants held that land in trust for themselves and the other co-lessees. But that presumption is a rebuttable one. In this case the defendants applied for a new title to the same land after the land had reverted to the State and with notice to the plaintiffs. This action originated with the plea that the defendants had applied for a new title without the knowledge of the plaintiffs and without being informed that the former titles had expired. That plea has been proved to be untrue. Then it is claimed that the defendants must be deemed to hold the land in trust for themselves and the other co-lessees because the title was obtained by use of special information gained by the 3rd defendant in the course of his trusteeship. The mining titles expired in August and September 1960 and thereupon the relation between the defendants and plaintiffs as co-lessees ceased. The partnership in the kongsi was dissolved in October 1960; thereupon their relation as partners ceased. In 1963 when the defendants applied for a new title to the same lands the only common tie which subsisted between them was their common parentage. Even if fiduciary relations had subsisted by virtue of the 3rd defendant taking upon himself the responsibility to apply for renewal of titles, that relationship would have ended when the plaintiffs were informed that the titles had expired and it was open for anyone to apply for a new title. The omission to inform the plaintiffs that the collector had suggested that all the co-lessees should sign an application for a new title, does not in my opinion, amount to the suppression of special information vital to the success of the application. The three defendants had succeeded in obtaining a new title despite the fact that they did not constitute all the former co-lessees. In April 1963 the 1st plaintiff was advised in P.7 to consult the 2nd plaintiff and to apply for a new title by himself or to make further investigation if he was interested. He did nothing until November 1964, when the price of tin was attractive, to write the letter of protest to the Mentri Besar over the grant of a title to the defendants. The 3rd defendant was under no obligation, as far as I can see, either legal or moral, to have applied for a new title on behalf of all the other co-lessees. Nor could he have objected if all or some of the other co-lessees had put in a joint application on behalf of themselves. I find no merit in the claim in this action.

The suit is dismissed with costs.

Claim dismissed.

Solicitors: *Gibb & Co.; Maxwell, Keni n, Cowdy & Jones.*

SAW TONG SENG v. ONG KIM HOON

[O.C.J. (Winslow J.) December 9, 1967]
[Singapore — Suit No. 566 of 1967]

Damages — Personal injuries — Right arm — Loss of — Disarticulation from shoulder joint — No benefit from artificial arm — Taxi driver — No longer able to drive taxi again — Loss of earning — General damages — Devaluation — Living standard.

The plaintiff, a taxi driver aged 34 had his right arm disarticulated from the shoulder joint as a result of an accident for which the defendant admitted liability. The medical consultant was of the opinion that the plaintiff had lost the use of that arm completely and he could never derive any benefit from the artificial arm which would merely serve as an ornament. The plaintiff was earning a salary of about $200 per month. It was also in evidence that he would no longer be able to drive a taxi and had not done so since the accident.

Held: (1) in assessing general damages there are three elements to be considered: (a) pain and suffering, (b) loss of future earnings, and (c) the disadvantage arising from disablement apart from loss of earning power. With regard to (c), one must take into account factors such as loss of the amenities and enjoyment of

life, the embarrassments and drawbacks to which a man without a right arm will ordinarily be exposed and other disadvantages;

(2) one has to bear in mind that in dealing with award of damages in Singapore, the standards of England do not necessarily apply and one must make allowances for different living conditions and lower earning capacities here of persons like the plaintiff. Taking all these factors into consideration the plaintiff should be awarded $25,000 for pain and suffering and all the disadvantages arising from his disablement plus a further sum of $23,000 for loss of future earnings and $5,240 as special damages.

Cases referred to:—

(1) *Low Ah Tow* v. *Yusof bin Kayab* [1954] M.L.J. 112.

(2) *Storrow* v. *John Dickenson & Co. Ltd.*, Kemp & Kemp: Quantum of Damages Vol. 1 (2nd Edn.) 449.

(3) *Ng Kay Thong* v. *Chee Shan Shong* [1966] 1 M.L.J. 235.

(4) *Lew Fa* v. *Seng Chong Metal Works Ltd.* [1966] 1 M.L.J. 231.

(5) *Van der Velde* v. *Lim Seow Tat & Anor.* [1964] M.L.J. lvii.

(6) *Mohamed Haneefa s/o Sulaiman Pillai* v. *E. Krishnan Chettiyar* Suit, No. 902 of 1957 (unreported).

CIVIL SUIT.

H. E. Cashin for the plaintiff.

Tan Tee Seng for the defendant.

Cur. Adv. Vult.

Winslow J.: Liability having been admitted, it only remains for me to assess damages in this case.

I will assess special damages first and get them out of the way before dealing with the more important and difficult question of general damages.

The plaintiff, who is now 34 years of age, had his right arm disarticulated from the shoulder joint itself leaving a 6" curved scar at the end of the stump which fortunately for him was not tender. The accident which caused this tragic loss occurred on 3rd May, 1966. The cost of an artificial arm is $1,550. According to Mr. Yeoh Kean Hong, senior lecturer and consultant, Orthopaedic Unit "C" at the General Hospital, this arm will serve purely as a dress arm for cosmetic purposes only. In other words, he has lost the use of that arm completely and he can never derive any benefit from the artificial arm which will merely serve as an ornament. Transport expenses have been agreed at $90. The only other item of special damage relates to his loss of earnings from May 1966 when he lost his arm. He was a taxi driver at the time said to be earning $250 per month. He will no longer be able to drive a taxi again and has not done so since the accident. In the absence of any evidence as to actual earnings I assess damages for loss of earnings during the last 18 months or so at, say, an average of $200 per month, which adds up to $3,600. This with the above two items makes a total of $5,240.

I now turn to general damages. In assessing damages in this respect, there are three elements to be considered. As Sir Charles Murray-Aynsley C.J. said in the Court of Appeal in *Low Ah Tow* v. *Yusof bin Kayab* [1] these are:—

(a) pain and suffering;

(b) loss of future earnings;

(c) the disadvantage arising from disablement apart from loss of earning power.

With regard to this last element, one must take into account factors such as loss of the amenities and enjoyment of life, the embarrassments and drawbacks to which a man without a right arm will ordinarily be exposed and other disadvantages too numerous to mention.

As Birkett L.J. said in *Storrow* v. *John Dickenson & Co. Ltd.* [2] reported at page 449 of Vol. 1 of *Kemp & Kemp* on the Quantum of Damages (Second Edition), the essential difficulty lies in the fact that when a man has lost his right arm, there are no sums of money in the world that can, in the true sense of the word, compensate for it. But this court has to make an assessment in terms of money because there is nothing else it can do to compensate him. In England, sums ranging from £4,500 to £9,500 have been awarded for amputation of one arm or where an arm has been rendered virtually useless. Of course, £9,500 was awarded in an exceptional case in which not only did the plaintiff have his left arm dragged off his body but his right shoulder was also badly injured so that he could hardly use even his right arm effectively, except for the very lightest things. The next highest award was a little over £6,000. That was in 1959. All the other awards were also made before 1960. Having regard to the rising cost of living, devaluation, etc. awards would no doubt be higher today. But one has to bear in mind that in dealing with the award of damages in Singapore, the standards of England do not necessarily apply and one must make allowances for different living conditions and lower earning capacities here of persons like the plaintiff.

I have also been taken through a number of Malayan cases, some of which are quite recent ones, such as *Ng Kay Thong* v. *Chee Shan Shong* [3] and *Lew Fa* v. *Seng Chong Metal Works Ltd.* [4] In these last two cases, both tried by Abdul Aziz J., the plaintiffs concerned lost the use of their left arms and general damages of $22,500 and $28,000 respectively were awarded, leaving out altogether the question of loss of future earnings. In *Lew Fa's* case, the total award was $43,000 including a sum of $15,000 in respect of loss of future earnings.

The first proposition to be remembered, as it has received general judicial approval, is that an arm is worth more than a leg. Further, it seems to me that, depending on whether a person is right-handed or left-handed, a right arm is worth more than a left arm and *vice versa* respectively. In the present case I understand that the plaintiff was right-handed and it is quite obvious that he can never be a taxi driver any more. Whether he will be able to obtain any other form of employment, except in the lightest duties, is a matter for speculation. In some of the decided cases, injured persons have, as an act of charity, been retained in employment in the performance of less arduous duties by their former employers. In such cases they have not suffered the same loss of income as in the case of those who were completely unfit to carry out any duties at all or were unable to obtain gainful employment of any kind.

I now turn to Singapore cases. There is only one reported case *Van der Velde* v. *Lim Seow Tat & Anor.*[5] where Chua J. made an award of general damages to the extent of $45,000. In that case, however, the plaintiff, who was a Dutch bank officer, suffered no loss of earnings but he underwent considerable pain and suffering for a very considerable period of time. He also underwent many operations and saw many medical advisers and surgeons.

I have since discovered another case, also decided by Chua J., which is unreported and I therefore sent for the file concerned. I have had the advantage of seeing a written judgment by my learned brother in that suit, i.e. Suit No. 902 of 1957, *Mohamed Haneefa s/o Sulaiman Pillai* v. *E. Krishnan Chettiyar.*[6] He awarded $25,000 general damages in that case. There the man lost his left arm which had to be amputated and he was in severe pain for a week or so after the operation. He remained in hospital for about three weeks after which he was discharged but he had to attend the General Hospital as an outpatient for a further four months or so. He was re-employed by his employers, the Singapore Traction Company, by whom he had been previously employed as a conductor, in the new capacity of a storekeeper, which gave him $60 per month less than the salary he had previously drawn. In his case, also, the artificial arm was said to be not of any great use to him as the stump of the arm was too short for the effective functioning of the artificial arm. The plaintiff was 35 years of age, which is very near the age of the plaintiff in this case, but it should be borne in mind that that award was made 10 years ago.

It is by now accepted that awards should be in line with a discernible trend or pattern of awards in reasonably comparable cases because it is highly desirable that in similar cases involving persons who are of similar age, social and working habits, earning capacities and intellectual as well as recreational pursuits, etc., there should be as much uniformity as it is possible to achieve. This will tell a suitor roughly what he can expect by way of compensation and, at the same time, enable defendants to anticipate what their liabilities are likely to be.

I would award him in respect of pain and suffering as a result of the total loss of his right arm and all the disadvantages arising from his disablement, apart from loss of earnings, the sum of $25,000. I might have made this more if there had been evidence of greater pain and suffering than in *Mohamed Haneefa's* case. The latter received $25,000 in 1957 for the loss of his left arm but that amount included an element for loss of earnings at $60 per month. I think that the awards of $28,000 in *Leow Fa's* case and $45,000 in *Van der Velde's* case were probably as high as they were because the plaintiffs underwent greater hardships during treatment. In the latter case the award no doubt also took into account the fact that, as a Dutchman, it made little difference to his living standards whereabouts in the world he lived.

With regard to loss of future earnings I would assess this at $23,000.

General damages therefore will amount to $48,000 and, special damages being $5,240, judgment will be entered for a total sum of $53,240 altogether to be paid to the Public Trustee on his behalf.

Usual orders as to costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

ABDUL RAHMAN v. TAN JO KOH

[F.C. (Azmi C.J. (Malaya), Ismail Khan and MacIntyre JJ.) December 14, 1967]

[Kuala Trengganu — Federal Court Civil Appeal No. X. 22 of 1967]

Tort — Assault — False imprisonment — Justification — Conflicting evidence — Damages.

This was an appeal from a dismissal on a claim for damages for assault and false imprisonment brought by the appellant, a carpenter, against the respondent a police constable attached to the police station at Tumpat, Kelantan.

The appellant and respondent gave somewhat different versions as to what happened. According to the respondent he met the appellant in the course of his rounds at a coffee shop. From the appellant's behaviour the respondent suspected the appellant of carrying a concealed weapon upon his person and the respondent asked the appellant whether he carried any. On the appellant denying possession of any weapon the respondent invited the appellant to go to the police station to be searched. The appellant refused to go to the police station immediately and thereupon the respondent arrest d the appellant. The appellant however resisted the arrest and he was dragged to the police station (which was 100